

BORDERS AND BOUNDARIES  
JUSTICE AND EXCLUSION IN THE AGE OF GLOBALISATION

**Global and social justice**

The idea of global justice is that of justice among individuals independent of nations, and as a consequence it is a theory of justice among nations. The important words in the above sentence are “as a consequence”. Proponents of global justice, authors like Thomas Pogge, Kok-Chor Tan, Charles Beitz, Gillian Brock, or even Henry Shue, argue in favor of a strictly liberal foundation for global justice. According to them, global justice is equal justice for every individual independently of who he or she is, without any consideration of race, gender, ethnic origin and *of where he or she happens to have been born*. Just as liberals consider that skin color or gender should not have any incidence on peoples’ claim to equal justice, global liberals argue that the place of birth, for example, Sierra Leone rather than Japan, is arbitrary from a moral point of view and that it should not enter into account when we try to determine peoples’ right or entitlements. Yet, arbitrary as it is, in the world in which we live this difference clearly has far reaching consequences on a person’s opportunities, welfare or rights. It is this difference between the equality of individuals from a moral point of view and the real inequalities that exist in the world at the global level that motivates proponents of global justice. From this liberal individualistic point of view, nationality (where one happens to have been born) is a morally irrelevant accident. However, according to these same authors, the means of realizing really universal justice, short of establishing a world state – something which none of the proponents of global justice I know of supports -, necessarily have to take into account the national (or rather the international) level, that is to say, a level where more or less sovereign and independent collective decision centers interact. In fact the world wide institutions that are envisaged as ways of fostering global justice, for example taxes on resources or insurance schemes, can only be implemented with the help and agreement of national governments. It is through these institutional mechanisms that global justice, understood as “justice for all individuals independent of nations”, becomes justice “among nations”.

Of course schemes that aim at implementing global justice entail a transformation of relations among nations and require setting up multinational or international institutions that will permit a fairer global distribution of wealth and resources. These institutions will change our

understanding of what nations are, of their rights and privileges; nonetheless they do not entail the disappearance of nations. In fact in many theories of global justice, national differences that at first are described as “morally arbitrary”, later on receive a moral justification, either as a means of realizing global justice, or through the idea that there is a “moral privilege” of co-nationals. According to many theories of global justice we have towards co-nationals duties that we do not have towards individuals from other countries.<sup>1</sup> In fact many recent theories of global justice take pains to show that they are not incompatible with some form of nationalism.

Broadly understood, global justice is social (or economic) justice at the global or world level. In fact, theories of global or cosmopolitan justice do not present any important departure from classical liberal theories of social justice. They share with those theories of justice three basic theoretical presuppositions. The first is the priority of individual. The second may be called the institutional strategy and the third is a particular understanding of and relation to politics.

The priority of individuals means that only individuals are taken to have rights and moral value, they are says Thomas Pogge “the ultimate units of concern” (p. 169)<sup>2</sup>. Individuals and only individuals import and they all import equally, independently of any “morally arbitrary accident”, like race, place of birth, gender, physical ability, the language they speak, etc. Similarly in liberal theories of social justice it is taken for granted that individuals alone morally count and that they all count equally. The main difference is that in classical theories of social justice the scope of the theory is limited to one nation or state. It is nonetheless generally assumed that the theory is universal and that it applies to every nation or state. The only, but very important, exception to this general rule is John Rawls. According to him, “justice as fairness is not intended as the application of a universal moral conception”. To the contrary, it is, he argues, indebted to a particular tradition of moral and political philosophy. It also depends on the particularities of Western political history as it was shaped by the Wars of Religion and the development of the principle of toleration. In consequence, says Rawls, it is unlikely that it can be applied universally.<sup>3</sup>

However for most authors, theories of social justice are just as universal as theories of global or cosmopolitan justice. The main difference between the two types of theories concerns their proponents’ attitude towards the present division of the world in independent states.

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<sup>1</sup> However, see Henry Shue *Basic Rights Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, 1996), especially pp. 131 -152 and Gillian Brock *Global Justice A Cosmopolitan Account* (Oxford University Press, 2009) especially chapter 10, for criticism of the idea that there is a moral priority of compatriots.

<sup>2</sup> Thomas Pogge *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).

<sup>3</sup> John Rawls “Justice as Fairness: Political not Metaphysical” in *Collected Paper John Rawls* (S. Freeman, ed.) (Harvard University Press, 1999) p. 390.

Theories of social justice consider that it is sufficient to address the question of justice at the level of each individual state. Proponents of global justice argue that this it is not. According to them, comparison between states reveals differences in wealth and power which indicate that morally arbitrary accidents, like the place of birth, or the natural distribution of (natural) resources, trump individuals' right to equal opportunity. Given that equal opportunity is a central requirement of social justice they argue that cosmopolitan justice is implicit in liberal theories of justice and that global justice only aims at realizing the ideals contained in those theories.<sup>4</sup> If Rawls's original position were to be open to everyone simultaneously rather than understood as applying to citizens of one state only, individuals under a veil of ignorance concerning where they were born would choose principles of justice that 1) take into account the inequality between rich and poor countries and 2) foster at the international level institutional arrangements that compensate gross inequality between nations.<sup>5</sup> Thus one of the main differences between social theories of justice and theories of global justice is the extent to which they assume that individual modern nation states taken individually constitute adequate tools to realize social justice and need to be complemented by international institutions.

The second basic theoretical assumption that is shared by theories of social and of global justice may be called the "institutional strategy". Even if, according to such theories, individuals, and individuals only have moral import, justice according to them is to be realized through institutional arrangements. The goal of justice is to devise fair institutional arrangements. Social justice either at the national or at the global level cannot be realized by focusing on particular persons or situations, but by comparing basic social structures. Penal, or criminal justice also targets individuals, however it deals with specific transgressions and individuals, rather than institutions and representative persons. Though it is realized through specific institutions criminal justice ways reaches – so to speak – below the level of institutions to particular persons and actions. Political justice again is different in this regard. Its essential targets are not individuals, but groups. It aims at setting up a just political order and deals with the particular claims of particular groups as they were determined by specific historical situations.<sup>6</sup> To the contrary, theories of social and global justice aim at establishing fair institutional arrangements. For example, in Rawls a fair social structure is one which guarantees equal opportunity to all and

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<sup>4</sup> See for example Thomas Pogge *Realizing Rawls* (Ithaca: Cornell University Press, 1989) and more recently Gillian Brock *Global Justice a Cosmopolitan Account*, op. cit.

<sup>5</sup> See Gillian Brock *Global Justice* (Oxford University Press, 2009) for an application of the Rawlsian original position at the global level.

<sup>6</sup> This is why I have argued elsewhere, that theories of multicultural justice are best understood as theories of political justice, rather than as theories of social justice. Paul Dumouchel « Redistribution and Recognition » in *Ritsumeikan Studies in Language and Culture*, 19.4: 117-127 (2008).

where inequalities are to the advantage of those who are less well off. Authors like Thomas Pogge argue that *mutatis mutandis* the same should apply at the global level. A world order, like the present one, that is incapable of guaranteeing equal opportunity to all independently of where they live and in which inequalities are not to the greater benefit of those who are less advantaged is unfair.

The third basic theoretical assumption that is common to both theories of social and of global justice is a particular type of relationship to politics. Rawls, in *Theory of Justice* seems to consider that agreement on the first principle of justice – which deals with what are usually described as *political rights* rather than *social rights* – is relatively straightforward, and spends much less time (and pages) discussing the first than the second principle of justice. This first principle, he thinks, corresponds to institutional arrangements that are relatively well accepted in modern constitutional democracies. According to him, the real challenge arises when it comes to choosing the two parts of the second principle of justice. Similarly, most proponents of either social or global justice take for granted the truth of political liberalism and often consider that no other political option is possible or consistent with the requirements of justice. What is characteristic of this relation to politics is the impression (and the illusion) that the political question is resolved. That it has been settled satisfactorily once and for all. For theories of social justice politics is not an issue anymore, or rather, the only political issues that remain are those that concern social justice, redistribution. Theorists of social justice implicitly assume that the existence of the modern Western liberal nation state and of the institutions that go with it. They implicitly take them for granted.

Apart from Rawls, who has explicitly defined his conception of justice as political,<sup>7</sup> this presupposition remains invisible and the role it plays in the theory is never analyzed, let alone criticized.<sup>8</sup>

Global theories of justice recognize that the organization of the world in independent sovereign nation states has major consequences on issues of social justice and equal opportunity. They therefore propose to establish international institutions that will compensate or correct the injustices that result from the present world organization. However, like theories of social justice they assume that the political question has been settled. Social theories of justice generally take for granted the existence of a modern nation state, without noticing the importance of this

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<sup>7</sup> John Rawls “Justice as Fairness: Political not Metaphysical” in *Collected Papers*, S. Freeman ed. (Harvard University Press, 1999), pp. 388-414. Note that the contrast is with “metaphysical” rather than with “social”.

<sup>8</sup> Rawls takes into account the role that this political presupposition plays in his theory of justice and that is precisely why, as we will see later on, he is not a proponent of global justice.

supposition in the institutions of justice they recommend, and, of course, without analyzing its precise role. However, in the case of global justice the political arrangement and solution that they are taken for granted by the theory do not actually exist. To the contrary, there is no institution that corresponds to that basic theoretical assumption, according to which the political question has been permanently resolved. In other words what can, sometimes, be assumed to be the case within the closed context of an isolated nation state cannot, in any way whatsoever, be considered to be the case at the global level.

Further, the international disorder and injustice that theories of global justice complain of, surprisingly, do not incite them to question their prejudice in favor of nation states. As if this disorder was only that, disorder, rather than a necessary feature of a particular type of international organization, one that rests on a plurality of independent nation states. Theories of global justice consider evident that inequality between nations is only an accident, rather than a necessary feature of the organization of the world in a community of nation states. They take it for granted that injustice at the international level can be remedied without raising major political questions. They assume, a certain division of labor between politics and social justice that probably only has place within the context of individual nation states.

An extreme example of this separation between social and political justice, and of a certain naïveté towards political questions, can be found in *Justice without Borders* by Kok-Chor Tan. In that book, Tan, following Yael Tamir, argues that one of the interests of an international tax that would redistribute wealth from rich to poor countries is that it would allow rich countries to maintain strict border control in order to protect their cultural homogeneity and democratic institutions.<sup>9</sup> In circumstances, where wealth and resources would be more equally distributed, argues Tan, keeping closed borders would not deprive individuals from other countries of equal opportunity and access to similar benefits. Yael Tamir had already framed the problem:

Restricting immigration in order to retain the national character of a certain territory is only justified if all nations have an equal chance of establishing a national entity, in which its member will be given a fair chance of pursuing their personal and collective goals. The right to preserve cultural homogeneity is therefore contingent on the welfare of other nations. Liberal nationalism thus implies that it is justified for a nation to seek homogeneity by restricting immigration only if it has fulfilled its global obligation to ensure equality among all nations.<sup>10</sup>

One of course may wonder if restricting immigration is justified in any case and if freedom of movement does not constitute a basic right that cannot be overridden by the desire to preserve cultural or national homogeneity. Suppose, for example, that the standard of living, educational opportunities and health services between Shiga and Kyoto prefectures are approximately

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<sup>9</sup> Kok-Chor Tan *Justice Without Borders* (Cambridge University Press, 2004), pp. 123-131.

<sup>10</sup> Yael Tamir *Liberal Nationalism* (Princeton University Press, 1992) p. 161.

equivalent, does it follow that, in consequence, we would be justified from preventing people from moving freely from one prefecture to the other? Leaving such issues aside, it is clear that Tan, and Tamir, take for granted that the international institutions that are necessary for implementing global justice would leave the overall structure of the international community pretty much as it is.<sup>11</sup>

### **Borders and universality**

Proponents of global justice recognize that the present international arrangement of rich and poor states where a few very rich and powerful nations monopolize most of the world's wealth and resources, while millions live in abject poverty is radically unfair. There can be no moral justification of the fact that individuals have higher morbidity and mortality rates, less access to education and reduced opportunities just because they happen to have been born outside of the first world of industrialized nations. Theories of global justice also argue that this inequality is neither an accident, nor simply the result of incompetence and mismanagement on the part of poorer and less privileged states, but rather that it proceeds from a system of international relations and of world trade that advantages rich nations and disadvantages weaker ones. They therefore claim that this system needs to be reformed, that a fairer world trade and a more equal distribution of resources have to be put in place, in order to allow weaker nations, and ultimately those persons who live within them, to enjoy welfare and opportunities that are similar to those of people who live in richer states.

Advocates of cosmopolitan justice argue that there is no reason why universality should stop at the border of that nation state where the philosopher/theorist happens to live. If a theory of justice is explicitly universal, then we cannot justify excluding from its scope and depriving of justice, those who happen to have been born elsewhere, who think differently than us or share a different tradition of moral and political thought. That is to say, there is no moral theoretical reason, though of course there may be political reasons, as nationalists have usually argued. However, according to theorists of global justice, these political reasons however are not morally relevant. The political exclusion of foreigners from the scope of our obligations is morally unjustified. Both parties in this discussion, liberal nationalists and cosmopolitans, share at least one fundamental presupposition about the relation between nation state and universality. Within the liberal nation state equal benefit and advantages should be extended to all. Cosmopolitans are surprised that this "all" ends at the border of the nation state. Nationalist, to the contrary, are

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<sup>11</sup> On this issue see also the essays collected in Gillian Brock & Harry Brighouse, eds. *The Political Philosophy of Cosmopolitanism* (Cambridge University Press, 2005).

aware of the fact that historically “all” in this context, has never meant everybody. At some point in the past it included only those who owned landed property or who could pay a certain amount of taxes, later on it came to include all adult males, but even then it still excluded women, those who were of a different race or ethnic group or those who lived in the colonies. Universality in the context of the nation state has always been limited. It has always been confined at best to all citizens and a central question has ever been to determine who are and who are not citizens?

It may be argued of course that the development of modern constitutional democracies went hand in hand with the inclusion of more and more people into the category of citizens. This, in a sense, is true. Landless peasants, laborers, women, members of minority groups, criminals and person handicapped were progressively accepted as full citizens. The ideal of global justice, one may add, simply extends further this process of inclusion, pushing it beyond the limit of the nation state. However, a different history of nation states has also been written, one which is not of inclusion but of exclusion, or rather of inclusion and exclusion. The universality of rights and benefits has always been understood to exclude some, so that the process of inclusion has always had a counterpart of exclusion, and what appears within a certain domain, and as long as we remain focused on that domain, as the growth of inclusion, is inseparable from exclusion, from establishing borders that delimit that domain. In consequence the historical process of growing inclusion can perhaps best be described as a displacement of exclusion. While some new categories of individuals were included, for example co-nationals who do not own property, new categories of individuals who were subjects without being citizens were also created, for example in the colonies, or metropolitan territories as guest or foreign workers. Throughout their history nation states also practiced exclusion much more violently through the forced displacement of populations. It has been estimated that after the Second World War more than 15,000,000 people were displaced, that is to say, driven away from their land and forced to settle in a different country. This was done by the winners, the allies, countries who mostly were constitutional democracies. It may be argued of course that these were extraordinary times, and they were. However this immense operation of ethnic cleansing took place after the war, once the hostilities were over and it was considered as a precondition for establishing a normal international situation, one where a community of nation states could function peacefully.<sup>12</sup>

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<sup>12</sup> See Alfred-Maurice de Zayas *A Terrible Revenge The Ethnic Cleansing of East European Germans* (New York: Palgrave Macmillan, 2006) and Pertti Ahonen, Gustavo Corni, Jerzy Kochanowski, Rainor Schulze, Tamas Stark & Barbara Stelzi-Marx *People on the Move forced population movements in Europe in the Second World War and its aftermath* (Oxford: Berg, 2008).

In fact the close relationship between modern nation states and forced population homogeneity has been well documented by historians and political theorists.<sup>13</sup> The birth of many nation states, for example India and Pakistan, Israel, Greece and Turkey to name but a few led to forced homogenization and massive population expulsion.<sup>14</sup> Today most historians, like the authors of *People on the Move Enforced Population Movements in Europe in the Second World War and Its Aftermath* take for granted the strong historical relationship between the rise of nation states and forced population homogenization and displacement. From this point of view, borders are not simply morally irrelevant accidents that our theories of social justice happen to take a little too seriously. To the opposite, they are a necessary feature of nation states, their goal is to exclude and it is only within that space from which others have been excluded that, so far, we have ever been able, and only very imperfectly, to institutionalize freedom, equality and social justice.

The limited or “regional” universality of modern nation states and in particular of constitutional democracies is not accidental, but an essential characteristic of that type of political organization. Regional universality means that universal rules, rights and duties only extend over a certain domain. They apply to everyone within that domain – which is why they are universal, but they do not extend outside of it – which is why that universality is regional. It has also been characteristic of the modern state that this domain is defined territorially. Universality stops at the borders of the state. Theories of global justice deny that the regionalism of theories of social justice has any real moral or conceptual foundation. If theories of justice are universal, they ask, why do they limit their universality to the domain accidentally determined by modern states, especially in view of the fact that the existing international systems leads to patently unfair results? However, in spite of the fact that they recognize that this division of the world has no moral or conceptual foundation they also view it as inevitable in practice. Not only in the sense that correctives applied to the world system in order to make it more just will to a large extent rest on existing national institutions, but also in the sense that nations are also deemed necessary and in some sense morally justified. This “contradiction” I have argued comes from the fact that theory of global justice have unwittingly taken from theories of social justice a political assumption whose importance has been recognized only by John Rawls and which is precisely the reason why he eschews global justice.

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<sup>13</sup> See for example Heather Rae *State Identities and the homogenisation of people* (Cambridge University Press, 2004).

<sup>14</sup> Illan Pappé *The Ethnic Cleansing of Palestine* (Oxford: Oneworld Publications, 2006); Gyanendra Pandey *Remembering Partition: Violence, Nationalism and History in India* (Cambridge University Press, 2001) on Greece and Turkey see Heather Rae *State Identities*, op. cit.

## **Borders and boundaries**

In conclusion I want to offer another reason why theories of global justice should pay more attention to the underlying political presupposition concerning nation states which they take for granted. Analysis of the present day world situation suggests that the international system of sovereign states, inasmuch as it did at some time and to some extent exist, is now rapidly disappearing. In other words, there are good reasons to suspect that the world political situation is rapidly changing from what is spontaneously (and unwittingly) assumed by theories of social and of global justice concerning politics.

Nation states traditionally define their universality territorially, which is why their practices of exclusion so often led to population displacements. Similarly, the growing inclusiveness of social justice, when and where it has happened, has essentially taken place within the borders of individual states. However during the last twenty years or so, the entrenchment of inequality between nations has gone hand in hand with the growth of inequality between individuals in both rich and poor countries. Everywhere the growth of inequality has not only meant more poverty, but also political disenfranchisement for various groups and individuals, foreign workers or members of minority ethnic groups, for example.

There are here two movements which may seem contradictory, greater inclusion on the one hand, greater inequality and political disenfranchisement on the other. However they are not contradictory if inclusion and exclusion are taking place in “spaces” that are disconnected. The nation state defined inclusion and exclusion on the basis of the physical space of the territory. The territory however is a strange hybrid, a mix of physical extension and of cultural proximity. Traditionally both criteria were always used in negotiating inclusion and exclusion. Those who “belonged” to the same territory and shared the relevant culture were to be treated equally. Certain differences between them were to be considered irrelevant: whether young or old, man or women, rich or poor, all were citizens, co-nationals. In consequence the territory provided a homogeneous space, a frame of reference relative to which progress, regression or stagnation in terms of inclusion could be measured. This space is now in the process of disappearing.

France, the nation state *par excellence*, is today quite ready to accept that, in the suburbs of large cities, where inhabit a high proportion of foreign nationals and members of minority groups, the unemployment rate is two to three times the national average. Authorities are also ready to accept that police only enter these areas in groups and in cars for their own protection and that state funded housing can remain with broken windows for years, and garbage left in stairways, and so on. At the same time France has been in the process of institutionalizing gay

marriage, granting equal rights to people independently of their sexual orientation. The problem is that the spaces in which inclusion and exclusion take place are not continuous. The homogeneous space of the national territory has now disappeared.

At the international level, we are witnessing the rise of transnational solidarities and conflicts. It is true that there are major differences between individuals in terms of life expectancy, opportunities, access to education and health care, clean air and water, or resources depending on where they were born. However these differences do not simply follow the lines of divisions between nations and states. They do not simply reproduce the distinction between rich and poor nations.

The consequence of this is that global justice cannot take for granted the present organization of the world in nation states. Reducing world inequality to inequality of resources and welfare between states is inadequate. Many nation states today are what could be called “nominal states” they have a flag and a seat in the United Nations, but that is pretty much all. The state’s authority barely extends outside of the capital city and even then, often only thanks to foreign help and military presence. The solution to this situation cannot be found in trying to transform such countries into real nation states, first because nation states are real to the extent that they succeed in excluding people, others from their territory, and second because inequality of power is a necessary characteristic of the international system of nation states. Therefore equality between nation states is simply not going to happen. Just as colonialism was judged by Tagore a necessary concomitant of the organization of countries into nations,<sup>15</sup> nations he argued require “no nations”<sup>16</sup> to exploit, political and economic inequality is an essential aspect of a system of nation states.

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<sup>15</sup> Rabindranath Tagore *Nationalism* (New Delhi : Rupa & Co, 1992).

<sup>16</sup> That is to say, political entities that are not nation states, for example, colonies or protectorates.